

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT A. GIBBS,

Petitioner,

v.

UNKNOWN,

Respondent,

No. 2:21-cv-02023-TLN-CKD

ORDER

Petitioner, proceeding pro se, filed an application for writ of habeas corpus under 28 U.S.C. § 2254, which was dismissed July 11, 2022. (ECF No. 9.) Judgment was entered that day. (ECF No. 10.) On August 24, 2022, Petitioner filed a notice of appeal. (ECF No. 11.) Pursuant to 28 U.S.C. § 2107(a), a notice of appeal must be filed within 30 days of the entry of judgment. Petitioner's notice of appeal was untimely.

On August 25, 2022, the United States Court of Appeals for the Ninth Circuit issued an order to show cause as to why Petitioner's request for a certificate of appealability should not be dismissed for lack of jurisdiction. (ECF No. 17 at 1.) On September 7, 2022, Petitioner subsequently filed a motion for extension of time to file a notice of appeal. (ECF No. 15.) In his

1 motion, Petitioner alleged he did not receive the Court's entry of judgment until July 25, 2022, as
2 he was out of state. (ECF No. 15 at 1.) He further asserted the delay was due to his lack of
3 knowledge of the process for filing a notice of appeal. (*Id.*) Additionally, he stated he was slow
4 to react to Court orders because he had been "severely ill." (*Id.*)

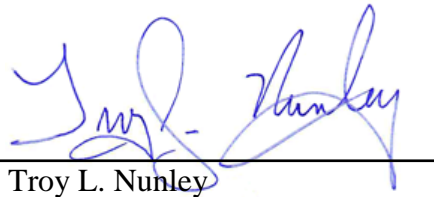
5 Pursuant to § 2107(c), the Court may deem Petitioner's notice of appeal timely by a
6 showing of "excusable neglect or good cause." On September 13, 2022, the magistrate judge
7 issued an order denying Petitioner's motion stating Petitioner failed to show excusable neglect or
8 good cause. (ECF No. 16.) On October 27, 2022, the Ninth Circuit remanded this action to this
9 Court stating that because both parties did not consent to the magistrate judge's authority, this
10 Court must consider Petitioner's motion to extend time. (ECF No. 17 at 2.)

11 The Court finds Petitioner has not shown either excusable neglect or good cause.
12 Petitioner's assertion of illness is vague and seemingly contradicts his assertion that he has been
13 out of state looking for work. Moreover, Petitioner had 16 days to file the notice of appeal after
14 returning from out of state. Finally, as to Petitioner's lack of understanding of the process,
15 Petitioner has failed to indicate what steps he took to educate himself before the deadline lapsed
16 or why his ignorance of the rules amounts to excusable neglect. *See Bonner v. Leon*, Case No.
17 2:13-cv-01858-APG-VCF, 2013 WL 6693649, at *2 (D. Nev. Dec. 17, 2013) (stating that good
18 cause is "more than simple inadvertence . . . or ignorance of the rules").

19 Accordingly, IT IS HEREBY ORDERED:

- 20 1. Petitioner's Motion for Extension of Time (ECF No. 15) is DENIED; and
21 2. The Clerk of Court is directed to serve a copy of this order on Plaintiff and on the
22 Ninth Circuit Court of Appeals.

23 **DATED: December 12, 2022**

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Troy L. Nunley

United States District Judge